

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KEVIN BURNAM, ) Civil No. 08-1420-H(LSP)  
 )  
Plaintiff, )  
v. ) NOTICE AND ORDER FOR EARLY  
 ) NEUTRAL EVALUATION CONFERENCE  
EZ LUBE, LLC, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case will be held on September 10, 2008 at 10:30 AM before United States Magistrate Judge Leo S. Papas, United States Courthouse, Courtroom G, First Floor, 940 Front Street, San Diego, California.

Pursuant to Rule 16.1(c) of the Local Rules of the United States District Court for the Southern District of California, both counsel and the parties who have full and unlimited authority<sup>1</sup> to

<sup>1</sup> "Full authority to settle" means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc., 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes that the person's view of the case may be altered during the face to face conference. Id. at 486. A limited or a sum certain of authority is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir.

1 negotiate and enter into a binding settlement shall appear in person  
2 at the conference and shall be prepared to discuss the claims,  
3 defenses and damages.

4 Unless there are **extraordinary circumstances**, persons  
5 required to attend the conference pursuant to this Order shall not  
6 be excused from personal attendance. Requests for excuse from  
7 attendance for **extraordinary circumstances** shall be made in writing  
8 at least 48 hours prior to the conference. Where the suit involves  
9 the United States or one of its agencies, only counsel for the  
10 United States with full settlement authority need appear. All  
11 conference discussions will be informal, off the record, privileged  
12 and confidential.

13 The parties may, but are not required to, submit a short  
14 Early Neutral Evaluation Conference Statement about the case on a  
15 confidential basis.

16 In the event the case does not settle at the Early Neutral  
17 Evaluation Conference, the parties shall also be prepared to discuss  
18 the following matters at the conclusion of the conference.

19 1. Any anticipated objections under Federal Rule of Civil  
20 Procedure 26(a)(1)(E) to the initial disclosure provisions of  
21 Federal Rule of Civil Procedure 26(a)(1)(A-D);

22 2. The scheduling of the Federal Rule of Civil Procedure  
23 26(f) conference;

24 3. The date of initial disclosure and the date for lodging  
25 the discovery plan following the Rule 26(f) conference; and,

26 4. The scheduling of a Case Management Conference pursuant  
27 to Federal Rule of Civil Procedure 16(b).

28 \_\_\_\_\_  
2001).

1 The Court will issue an appropriate order addressing these  
2 issues and setting dates as appropriate.

3 Questions regarding this case may be directed to the  
4 Magistrate Judge's research attorney at (619) 557-6384.

5 Based upon the Court's familiarity with these matters and in  
6 the interest of promoting the just, efficient and economical  
7 determination of this action, the Court issues the following orders  
8 at this time:

9 1. All formal discovery shall be stayed in this case until  
10 the completion of the Early Neutral Evaluation Conference set  
11 herein;

12 2. Twenty-one (21) days prior to the Early Neutral  
13 Evaluation Conference, Plaintiff's counsel shall lodge with  
14 Magistrate Judge Papas' chambers and serve on opposing counsel a  
15 statement, not in excess of two pages, including:

16 (a) An itemized list of the specific issues on the subject  
17 premises which are the basis of the claimed violations  
18 under the Americans with Disabilities Act;

19 (b) A statement of the amount and category of damages  
20 claimed by Plaintiff in this action;

21 (c) The amount claimed for attorney's fees and costs; and,

22 (d) The Plaintiff's demand for settlement of the case in its  
23 entirety.

24 3. After service of Plaintiff's statement, or whether or  
25 not Plaintiff's statement is served, and at least fourteen (14) days  
26 prior to the Early Neutral Evaluation Conference, counsel for the  
27 parties as well as property managers of commercial locations shall  
28 meet and confer in person at the subject premises regarding

1 settlement of (1) alleged premise violations, and (2) damages, costs  
2 and attorney fee claims. Plaintiff's counsel shall be responsible  
3 to make arrangements for the conference. **The meet and confer**  
4 **obligation cannot be satisfied by telephone or by the exchange of**  
5 **letters.**

6 4. Seven (7) days prior to the Early Neutral Evaluation  
7 Conference, counsel shall lodge with Magistrate Judge Papas'  
8 chambers a joint statement advising the Court of the status of  
9 settlement negotiations and setting forth all issues in dispute,  
10 including property issues, Plaintiff's alleged damages, and the  
11 claim for attorney's fees and costs, along with a description of any  
12 settlement demands and/or offers exchanged. If for any reason  
13 counsel can not comply with the meet and confer and joint statement  
14 requirements set forth in this order, counsel shall contact the  
15 chambers of Magistrate Judge Papas at least two court days before  
16 the Early Neutral Evaluation Conference, to explain the reasons  
17 therefore. Monetary sanctions shall be imposed for failure to  
18 comply with this order.

19 5. At the Early Neutral Evaluation Conference, Plaintiff's  
20 counsel shall provide documentation to the Court for *in camera*  
21 review supporting the amount of attorney's fees and costs claimed.

22 DATED: August 6, 2008

23  
24  
25   
26 Hon. Leo S. Papas  
27 U.S. Magistrate Judge  
28